TPDES PERMIT NO. WQ0004870000

APPLICATION BY	§	**BEFORE THE**
	§	
NAVARRO GENERATING LLC	§	**TEXAS COMMISSION ON**
	§	
TPDES PERMIT NO. WQ0004870000	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Navarro Generating LLC's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004870000 and on the ED's preliminary decision. As required by 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments.

The Office of the Chief Clerk received timely comments from the following persons: Mayor Cliff Brown, Mr. James L. Thompson, Ms. Ella Mae Jones, Ms. Constance L. Jones, Ms. Patricia J. Jones, Mr. Bryan Downs, Mr. Daniel Roberts, Ms. Barbara Roberts, Ms. Tina Roberts Denbow, Ms. Tonya Roberts, Mr. Rick Anderson, Mr. Jason K. Dodd, Ms. Diane Rawlins, Ms. Wendi Hammond, Mr. George Smith, Lee Mcleary, Mrs. Carla Steele, Ms. Lindsay King, Ms. Liz Smith, Mr. Terry Loftis, Mr. Charles E. Morgan, and Ms. Vicky Prater. This response addresses all such timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ's Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant proposes to operate the Navarro Energy Center, a natural gas fired combined cycle faciltiy with a total nominal generating capacity of 690 MW. Raw water is supplied to the facility by the City of Corsicana. The wastewaters produced at the facility include cooling tower blowdown, low volume waste sources (evaporation cooler blowdown, cation/anion mixed bed waste, media filter backwash, and eye wash and shower water), domestic wastewater, and storm water. Cation/anion mixed bed wastes are routed to a neutralization system for treatment prior to discharge via Outfall 001. Cooling tower blowdown and the remaining low volume waste sources are

discharged via Outfall 001 without treatment. Storm water from the site is routed to a retention pond and discharged via Outfall 002. Domestic wastewater from sinks, showers, toilets, and other sanitary facilities are routed to an on-site septic tank not regulated by this permit. The draft permit would authorize the discharge of cooling tower blowdown and low volume waste sources at a daily average flow not to exceed 1,430,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The proposed discharge route is to an unnamed tributary of Little Pin Oak Creek; then to Little Pin Oak Creek; then to Richland-Chambers Reservoir in Segment No. 0836 of the Trinity River Basin. The facility is proposed to be located at the intersection of Farm-to-Market Road 1394 and Southwest County Road 2100, approximately 3.3 miles southwest of Richland in Navarro County, Texas.

Procedural Background

The application was received on October 22, 2008, declared administratively complete on November 13, 2008, and declared technically complete on April 13, 2009. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published in the *Corsicana Daily Sun* on November 29, 2008 and *La Prensa Comunidad* December 10, 2008. The ED prepared a draft permit and the Notice of Application and Preliminary Decision (NAPD) was published in the *Corsicana Daily Sun* on July 2, 2009 and *La Prensa Comunidad* on June 29, 2009. A public meeting was held in Corsicana on December 7, 2009 and the public comment period ended at the close of the public meeting. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Bryan Downs, James L. Thompson, Ella Mae Jones, Constance L. Jones, Patricia J. Jones, Daniel Roberts, Barbara Roberts, Tina Roberts Denbow, Tonya Roberts, and Vicky Prater are concerned that Navarro Generating is seeking to discharge large volumes of wastewater containing numerous harmful contaminants from its electric utility generating plant into the public waters of Navarro County and the state of Texas. **Diane Rawlins** does not want any water tainted with anything discharged from this facility to the reservoir. **Wendi Hammond** comments that the application and draft permit fail to include all necessary information, analysis and requirements to comply with all requisite water quality criteria. Water quality-based effluent limits should have been imposed in the draft permit. She also comments that the application and draft permit fail to adequately address the individual and cumulative effects of the discharged pollutants (including but not limited to, selenium, mercury, radioactive pollutants, etc.) and the potential adverse impacts on the public and environment. The inadequacies include, but are not limited to, effluent limitations, monitoring, analysis, record keeping, and reporting. **Bryan Downs, James L. Thompson, Daniel Roberts, Barbara Roberts, Tina Roberts Denbow, Tonya Roberts, Jackie King, and Vicky Prater** are concerned about the effect this discharge will have on their animals and wildlife that drink from the creek. **Jackie King** is concerned that pesticides and herbicides in the Richland Chambers Reservoir will be concentrated in the facility's effluent being discharged.

RESPONSE 1:

The ED's technical review of the permit application begins with a review by the Water Quality Assessment (WQA) Section. WQA determines the designated uses of the water body segment that would receive the proposed discharge, the critical conditions for the water body (i.e., low flow) when the water body is most susceptible to adverse effects, the limitations to ensure the dissolved oxygen criteria are met, and the whole-effluent toxicity testing requirements. Upon completion of the review WQA provides effluent limitation recommendations used in the draft permit.

The proposed permit is drafted using information about the facility provided in the permit application. The effluent limitations are set by comparing technology-based effluent limitations with the water quality-based effluent limitations, using the following method: First, the permit writer reviews the information about the facility and the proposed discharge, and develops technology-based effluent limitations based on federal effluent guidelines. Then, using the application and recommendations from the WQA Section, the permit writer develops water quality-based effluent limitations. The permit writer then compares the technology-based limitations with the water quality-based effluent limitations and applies whichever one is the more stringent to the draft permit.

The wastewater from the facility will be screened for compliance with Texas Surface Water Quality Standards once the facility is in operation to ensure protection of aquatic life in the receiving stream and to protect the designated uses of Little Pin Oak Creek and the unnamed tributary of Little Pin Oak Creek. The Texas Surface Water Quality Standards (TSWQS) found at 30 TAC Chapter 307 states that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life." The methodology outlined in the Procedures to Implement the Texas Surface Water Quality Standards (IPs) is designed to ensure compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health. As stated in the IPs, no human health mixing zone is applied to discharges to intermittent streams with no significant aquatic life uses. Human health toxic criteria are not applicable if the effluent does not reach a perennial waterbody within three miles of the discharge point.

Because the Navarro facility has not been constructed, there are no effluent data from the facility that could be submitted with the application. Therefore, the proposed permit requires the Applicant to sample the initial discharges from the facility and analyze them for a series of pollutants to be screened against the concentrations necessary to protect the receiving water. If the permit is issued, the effluent data will be compared against the permit limits derived in Appendix A of the Statement of Basis/Technical Summary from the Texas Surface Water Quality Standards found at 30 TAC § 307, to ensure protection of aquatic life in the receiving stream and to protect the designated uses of Little Pin Oak Creek and the Unnamed tributary of Little Pin Oak Creek. If the effluent data show pollutants that have the potential to exceed the calculated water quality-based limitations necessary to protect aquatic life, TCEQ staff will initiate a permit amendment and additional monitoring,

effluent limits, and/or other controls may be added to the permit.

The effluent limitations for Outfall 001 and 002 are shown below. Outfall 001 has technology-based effluent limitations that were developed using Title 40 Code of Federal Regulations (40 CFR) Part 423 (relating to Steam Electric Power Generating Point Sources). Outfall 002 has effluent limitations based on Best Professional Judgment (BPJ) for discharges of storm water from this type of facility. The limitations and monitoring requirements established in the draft permit are listed below.

Outfall	Parameter	Daily Avg	Daily Max	Monitoring Frequency
001	Flow (MGD)	(1.43)	(1.92)	1/day
	Free Available Chlorine	0.2 mg/l, 0.2 lbs/day	0.5 mg/l, 0.5 lbs/day	1/week
	Total Suspended Solids	30 mg/l	100 mg/l	2/week
	Oil and Grease	15 mg/l	20 mg/l	1/week
	pH (standard units)	(6.0 min)	(9.0 max)	1/day
002	Flow (MGD)	(Report)	(Report)	1/day
	Total Organic Carbon	N/A	55 mg/l	1/week
	Oil and Grease	N/A	15 mg/l	1/week
	pH (standard units)	(6.0 min)	(9.0 max)	1/day

The draft permit also contains Whole Effluent Toxicity (WET) testing. WET testing is designed to protect the receiving water quality from the combined toxic effect of pollutants which may be present in the effluent. Acute WET testing measures the survival of an invertebrate and vertebrate test species within a mixture of wastewater and the receiving water at various concentrations. If a WET test shows that the effluent has the potential to cause lethal effects in the receiving stream, the Applicant is required to identify the toxicant or toxicants and reduce or eliminate the toxicity of the effluent. The draft permit requires 48-hour Acute and 24-hour Acute freshwater toxicity testing.

A guidance document provided by the Texas Agricultural Extension Service entitled "Water Quality: Its Relationship to Livestock" (Doc. No. L2374)[1] states that the most common water quality problems affecting livestock production are high mineral concentrations (excess salinity), high nitrogen, bacteria contamination, heavy growths of blue-green algae, petroleum, pesticide, and fertilizer spills. With the exception of total dissolved solids (TDS), which could potentially be elevated in cooling tower blowdown, the constituents of concern mentioned in the document are generally not associated with the waste streams generated from this facility and should not affect livestock. The document provides that TDS in the range between 1,000 and 3,000 milligrams per liter (mg/L) should be satisfactory for livestock. In the application, the estimated levels of TDS are between 467.6 mg/L and 515.2 mg/L.

In addition, the estimated effluent concentrations for TDS were screened against the Texas Surface Water Quality Standards. Based on this screening, the ED determined that no effluent limitations for TDS is needed in the draft permit at this time. If the permit is approved, the Applicant will be

[1] Available at: http://lubbock.tamu.edu/irrigate/documents/2074410-L2374.pdf

required to provide effluent data for TDS, which represents the actual discharge quality from the facility. This data will be screened against the Texas Surface Water Quality Standards. If the effluent data shows TDS concentrations that have the potential to exceed the calculated water quality-based limitations necessary to protect aquatic life, the ED will re-consider the permit and additional monitoring, effluent limits, and/or other controls may be added to the permit.

COMMENT 2:

Bryan Downs, James L. Thompson, Ella Mae Jones, Constance L. Jones, Patricia J. Jones, Daniel Roberts, Barbara Roberts, Tina Roberts Denbow, and Tonya Roberts are concerned that degradation caused by the discharge from this facility will lead to poor water quality, making the water unsafe for public drinking purposes and unsanitary for other uses. **Bryan Downs, James L. Thompson, Daniel Roberts, Barbara Roberts, Tina Roberts Denbow, Tonya Roberts, and Vicky Prater** are concerned about the effects the discharge will have on workers and children who may come into contact with the water in the creek. **Wendi Hammond** comments that the permit application fails to adequately analyze the wastewater's potential impact on the downstream domestic drinking water supply intake and that the antidegradation review was inadequate and incomplete. The application and draft permit fail to include all necessary information, analysis, and requirements to comply with the elements of the antidegradation policy and requisite analysis with regards to any pollutant. **Charles Morgan** comments that he wants TCEQ to use the most stringent aquatic and recreational criteria to develop the permit limits.

RESPONSE 2:

The proposed discharge route is to an unnamed tributary of Little Pin Oak Creek; thence to Little Pin Oak Creek; thence to Richland-Chambers Reservoir in Segment No. 0836 of the Trinity River Basin. The unclassified receiving waters, the unnamed tributary of Little Pin Oak Creek and Little Pin Oak Creek were determined to be intermittent (dry for at least one week during most years) until its confluence with Richland Chambers Reservoir. Intermittent waterbodies are assigned "no significant aquatic life uses" in accordance with the Texas Surface Water Quality Standards (TSWQS) at 30 TAC 307.4(h)(4). The classified perennial water body, Richland Chambers Reservoir is assigned contact recreation, public water supply, and high aquatic life uses as designated within Appendix A of the TSWQS. The dissolved oxygen criterion for the unnamed tributary of Little Pin Oak Creek and Little Pin Oak Creek is 2.0 mg/l. The dissolved oxygen criterion for Richland-Chambers Reservoir is 5.0 mg/l.

The TSWQS located in 30 TAC Chapter 307, designate criteria for the protection of aquatic life and human health in water in the State. Section 307.4(d) of the TSWQS states that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life." The Procedures to Implement the Texas Surface Water Quality Standards are designed to ensure compliance with 30 TAC Chapter 307. As stated in the IPs, no human health mixing zone is applied to discharges to intermittent streams with no significant aquatic life uses. Human health toxic criteria are not applicable if the effluent does not reach a perennial waterbody within three miles of the discharge point.

In accordance with 30 TAC § 307.5 and the IPs, an antidegradation review of the receiving waters was performed. TCEQ's antidegradation policy applies to any increase in pollution authorized by a TPDES wastewater discharge permit. Increases in pollution are determined by information on effluent characteristics that are provided in the permit application, the draft permit, and other available sources. The Standards Implementation Team conducts Tier 1 and/or Tier 2 review in accordance with § 307.5. Antidegradation reviews under Tier 1 ensure that existing water quality uses are not impaired by increases in pollution loading. TPDES permit amendments or new permits that allow increased pollution loading are subject to review under Tier 1 of the antidegradation policy, and all pollutants that could cause an impairment of existing uses are included in the evaluation.

A Tier I antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life use downstream, and existing uses will be maintained and protected. The review also preliminary determined that no water bodies with exceptional, high, or intermediate uses are present within the stream reach assessed. Therefore, no Tier 2 degradation determination is required. The preliminary determination can be reexamined and may be modified if new information is received.

Furthermore, the Applicant proposes to discharge utility wastewaters associated primarily with the cooling of electric generation units and auxiliary processes. The permitted waste streams are not expected to contain elevated levels of bacteria typically associated with domestic wastewaters and should not be detrimental to contact recreation uses. The draft permit explicitly prohibits the discharge of domestic wastewater. Domestic wastewater generated at the facility will be routed to an on-site septic tank system for disposal. Additionally, the proposed permit requires that the initial discharges be sampled and analyzed for a series of pollutants including bacteria to be screened against the concentrations necessary to protect water quality. If the effluent data shows pollutants that have the potential to exceed the calculated water quality-based limitations necessary to protect aquatic life, TCEQ staff will initiate a permit amendment and additional monitoring, effluent limits, and/or other controls may be added to the permit.

COMMENT 3:

Vicky Prater is concerned about the requirement for the facility to notify affected landowners three miles downstream along the proposed discharge route. Ms. Prater believes that all landowners along the entire discharge route, all the way to Richland Chambers Lake, should be notified and not just the landowners within 3 miles. Ms. Prater also believes the affected landowners should receive notice of wastewater discharges via certified mail. **Wendi Hammond** comments that the public notices regarding this permit application have been inadequate and/or incorrect and therefore, TCEQ must republish notice to allow the public its opportunity to review the complete application and provide meaningful and informed comments.

RESPONSE 3:

Applicants for a new permit must provide a list of affected landowners and a map showing their

location. To meet current permit application requirements, the Applicant is required to comply with all applicable sections of 30 TAC Chapter 305. The Applicant is also required to certify that the submitted application is accurate. An Applicant for a wastewater discharge permit is required to produce:

> [A] topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist, or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. . . . The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend *at least one mile beyond the tract boundaries* sufficient to show the following:
>
> (A) each well, spring, and surface water body or other water in the state within the map area;
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> (B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;
>
> (C) the location of any waste disposal activities conducted on the tract not included in the application;
>
> (D) *the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity*; and
>
> (E) such other information that reasonably may be requested by the executive director.

30 TAC § 305.45(a)(6), *emphasis added.*

> If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the *ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge.* The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources.

30 TAC § 305.48(a)(2), *emphasis added.*

The Commission rules relating to notice are embodied in 30 TAC Chapter 39. Section 39.413(1) requires the chief clerk of the TCEQ to mail notice of the NORI and NAPD to the (1) landowners named on the application map, supplemental map, the sheet attached to the application map or supplemental map, (2) persons on the mailing list for the application, and (3) persons who filed

timely public comment or request for hearing. Sections 39.405(f)(1), 39.418 and 39.419 require the Applicant to publish notice of the NORI and NAPD in the newspaper of largest circulation in the county where the facility is proposed to be located. In addition, the Applicant is required to "make a copy of the application available for review and copying at a public place in the county" where the facility is proposed to be located. Section 39.411 delineates the content of the text of a public notice. The published notice is intended to give the general public (particularly those who did not receive mailed-notice) notice of the pending application.

Neither the Applicant nor the chief clerk is required to give mailed notice to all downstream landowners under the rules. TCEQ rules do not require certified mail notice to landowners. The permit application, Executive Director's preliminary decision, and draft permit were made available for review and copying at the Corsicana Public Library, 100 North 12th Street, Corsicana, Texas. Notice of the location was contained in the NORI and NAPD. As stated above, the NORI was published in the *Corsicana Daily Sun* on November 29, 2008 and *La Prensa Comunidad* December 10, 2008. The NAPD was published in the *Corsicana Daily Sun* on July 2, 2009 and *La Prensa Comunidad* on June 29, 2009. The ED's staff has reviewed the NORI and NAPD published by the Applicant and determined that the text of both notices complied with the requirements of 39.411.

See also **Response 15** below.

COMMENT 4:

Wendi Hammond comments that the application is incomplete, contains inaccuracies and/or fails to include all necessary and required information. For example, the application inadequately describes the soils, ground water, surface waters, or the location of wells, faults, fractures, sink holes, wetlands, etc.

RESPONSE 4:

This application was received and reviewed under TCEQ's consolidated permit rules at 30 TAC Chapter 305. The Applicant is required to submit all applicable forms, material, and information contained in Sections 305.45 and 305.48. TCEQ staff reviewed the application and concluded that the required information was submitted. Worksheet 4.0, Receiving Waters, which requires information regarding the surface waters receiving the discharge was completed and submitted with the application. Information regarding sinkholes, fractures, wetlands, and faults is not something that is specifically required in the application for a TPDES permit. Information regarding wells, soils and ground water is only required to be submitted when the applicant is proposing to store industrial wastewater in an impoundment. Since the facility is not proposing to store industrial wastewater in an impoundment, this information was not submitted with the application.

COMMENT 5:

Wendi Hammond comments that the FEMA maps may not accurately reflect all 100-year frequency flood levels, and sole reliance upon those maps may not be proper.

RESPONSE 5:

FEMA is the government organization charged with determining the 100-year frequency flood levels and producing maps that reflect this information. TCEQ depends on the information provided by FEMA to be the most accurate information available regarding 100-year frequency flood levels. If commenters have additional information regarding 100-year frequency flood levels that they feel is more representative than the map for this area produced by FEMA, they are encouraged to provide this information to the TCEQ for their consideration during the permitting process.

COMMENT 6:

Wendi Hammond comments that the application gives only the primary purpose of the raw water supply, rather than identifying all its purposes.

RESPONSE 6:

TCEQ staff reviewed the application and concluded that the required information was submitted. The application for a TPDES permit does not require the Applicant to identify all the potential uses of raw water. A TPDES discharge permit addresses the wastewaters being produced by the facility.

COMMENT 7:

Wendi Hammond comments that the application states that additional construction for potable water treatment capability is possible, yet the application fails to account for, review, and analyze impacts, if any, from this additional construction. Likewise, the application fails to indentify where this construction, or the construction of the potable water well will exist.

RESPONSE 7:

The applicant is not required to provide information on possible construction activities that could occur in the future at the site at the time of application for a TPDE permit. Any construction not authorized by this permit at the facility would require either a new permit or an amendment to the instant permit if issue. If additional permits, or an amendment to the proposed TPDES permit is required because of any future construction activities, the Applicant would be responsible for securing these new permits or amendments prior to commencing construction activities.

The draft permit authorizes the discharge of low volume waste sources via Outfall 001. According to federal regulations, the term *low volume waste sources* means, taken collectively as if from one source, wastewater from all sources except those for which specific limitations are otherwise established in this part.[2] For this draft permit, those waste sources include, but are not limited to water treatment technologies, such as ion exchange water treatment system (cation/anion mixed bed waste), water treatment evaporator blowdown, media filter backwash, and blowdown from recirculating house service water systems. Effluent limits established in the draft permit for total

[2] 40 CFR § 423.11(b).

suspended solids and oil and grease at Outfall 001 have been established based on the discharge of these types of wastewaters. Any potential for these wastewaters to have an adverse impact on the receiving stream quality should be identified through the required effluent sampling and the WET testing requirements. Also, see **Response 1**.

COMMENT 8:

Wendi Hammond comments that the application fails to properly identify the raw water storage tank.

RESPONSE 8:

The TCEQ staff reviewed the application and concluded that the required information was submitted. The raw water storage tank was identified in the application as Attachment T-2, list of Significant Components in Water Systems, and again in Attachment T-4, Preliminary Water Balance and Flow Diagram.

COMMENT 9:

Wendi Hammond comments that the application fails to properly review what impact(s) may occur if the mixed bed is not generated every seven days, as assumed by the application.

RESPONSE 9:

The focus of a TPDES permit is the appropriate disposal of wastewater. The mixing bed is not considered to be part of the wastewater treatment process at the facility; rather, it is used to treat the raw water source to ensure the source water is of appropriate quality to be used throughout the facility. It is in the Applicant's best interest to generate the mixed beds as necessary to maintain appropriate water quality to be used during in the facility's processes.

The proposed draft permit contains technology-based effluent limits from the federal regulations[3] appropriate for the discharge of low volume waste sources. One component of low volume waste sources is wastewater from ion exchange water treatment systems.[4] The mixed bed is considered an ion exchange water treatment system. Therefore, the draft permit contains effluent limits designed to be protective of potential wastes from this type of process at the facility.

COMMENT 10:

Wendi Hammond comments that the application fails to identify and properly review the type, amount, frequency, and disposal of pollutants resulting from regular maintenance of the power plant. Likewise the draft permit fails to place appropriate limits on such pollutants as well as provide adequate record-keeping, reporting, and monitoring of such pollutants.

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[3] 40 CFR Part 423
[4] 40 CFR § 423.11

RESPONSE 10:

The draft permit authorizes the discharge of low volume waste sources via Outfall 001. According to federal regulations, the term *low volume waste sources* means, taken collectively as if from one source, wastewater from all sources except those for which specific limitations are otherwise established in this part.[5] For this draft permit, those waste sources include, but are not limited to wet scrubber air pollution control systems, ion exchange water treatment system (cation/anion mixed bed waste), water treatment evaporator blowdown, boiler blowdown, laboratory and sampling streams (water from eye wash station and showers), media filter backwash, floor drainage, cooling tower basin cleaning wastes, and blowdown from recirculating house service water systems.

Technology-based effluent limits for total suspended solids, which are monitored and reported twice per week, and oil and grease, which are monitored and reported once per week, are prescribed by the federal regulations and have been placed in the draft permit at Outfall 001 for low volume waste sources. Also, see **Response 1**.

COMMENT 11:

Wendi Hammond is concerned about why powder activated carbon is being injected "at various times" to control taste. Ms. Hammond states that it is unclear whether the representations on page 1 of Attachment T-2 are requirements or not. She is also concerned about whether the pump station at the facility is under the control of the Applicant.

RESPONSE 11:

The facility will receive its raw water from the City of Corsicana, which controls the pump station mentioned in the application. Corsicana adds the powder activated carbon to the raw water it provides to control taste prior to it being routed to the proposed facility. The Applicant provided the information regarding the pump station and the powder activated carbon to inform the TCEQ of the addition of the carbon to the raw water so that it could be taken into account when reviewing the application.

COMMENT 12:

Wendi Hammond comments that the draft permit fails to require as limits the assumptions used in the analyses in Attachment T-6. Without requiring these limits, the application fails to adequately analyze the potential adverse effects of the proposed wastewater discharge. She also comments that the draft permit fails to adequately address and include limitations for the pollutants provided with the application in the material safety data sheets.

RESPONSE 12:

The effluent data provided in Attachment T-6 of the application provided assumed concentrations of

[5] 40 CFR § 423.11(b).

pollutants in the wastestream from the proposed plant. These assumed concentrations were calculated based on four samples taken from Richland Chambers Reservoir, the source of raw water for the plant. The Applicant performed a mass-balance equation to determine the possible concentrations of pollutants that may result from the processes carried out at the plant and that may result on the wastewater discharged from the facility. The results of these calculations were compared to the water quality-based effluent limits calculated for the facility as described in Response 1. Based on this screening, only aluminum was found to be at concentrations that exceed the calculated water quality-based effluent limit for the protection of aquatic life in the receiving stream. No effluent limit has been included in the draft permit based on this screening of the assumed data. The proposed permit requires that the initial discharges from the facility be sampled and analyzed for a series of pollutants once the facility is in operation, including aluminum, to be screened against the calculated water quality-based limitations necessary to protect aquatic life. The analysis will detect any residual pollutants identified within the material safety data sheets for water treatment and process chemicals.

The draft permit also contains Whole Effluent Toxicity (WET) testing. WET testing is designed to protect the receiving water quality from the combined toxic effect of pollutants which may be present in the effluent. Acute WET testing measures the survival of an invertebrate and vertebrate test species within a mixture of wastewater and the receiving water at various concentrations. If a WET test shows that the effluent has the potential to cause lethal effects in the receiving stream, the Applicant is required to identify the toxicant or toxicants and reduce or eliminate the toxicity of the effluent. The draft permit requires 48-hour Acute and 24-hour Acute freshwater toxicity testing.

COMMENT 13:

Wendi Hammond comments that the application fails to adequately identify and analyze the general characteristic of the water body as natural storm and floodwater runoff.

RESPONSE 13:

TCEQ staff reviewed the application and concluded that the required information was submitted. In the application in Worksheet 4.0, Receiving Waters, Section 5, General Characteristics of Receiving Water Body, Item 5.a., the applicant indicated that the receiving waters upstream of the proposed discharge route is influenced by agricultural runoff. The Applicant indicated in Item 5. b. the uses of the water body to be livestock watering. In Item 5. c. the Applicant identified the aesthetics of the receiving waters and the surrounding area as "natural area." Natural storm and floodwater runoff are not offered as options to select when providing the general characteristics of the water body.

COMMENT 14:

Wendi Hammond comments that the application fails to adequately identify and analyze the uses of the receiving waters and water body other than livestock watering. This includes, but is not limited to, noncontact recreation, contact recreation, picnic activities, and fishing.

RESPONSE 14:

The Applicant provides information in the application on the use of the receiving water. This information is used to supplement the ED's final determination of the uses of the receiving waters, in accordance with the TSWQS and the IPs. The TSWQS designates criteria for the protection of aquatic life and human health in water in the state.

The proposed discharge route is to an unnamed tributary of Little Pin Oak Creek; then to Little Pin Oak Creek; then to Richland-Chambers Reservoir in Segment No. 0836 of the Trinity River Basin. The unclassified receiving waters, the unnamed tributary of Little Pin Oak Creek and Little Pin Oak Creek were determined to be intermittent (dry for at least one week during most years) until its confluence with Richland Chambers Reservoir. Intermittent waterbodies are assigned "no significant aquatic life uses" under 30 TAC § 307.4(h)(4). The classified perennial water body, Richland Chambers Reservoir, is assigned contact recreation, public water supply, and high aquatic life uses as designated within Appendix A of the TSWQS.

Waterbodies are designated for contact recreation use unless elevated concentrations of indicator bacteria (*E. coli*) frequently occur due to sources of pollution that cannot be reasonably controlled by existing regulations or if recreational activities are considered unsafe for other reasons, such as ship or barge traffic.

The TSWQS require that the draft permit provisions preclude toxic effects on human health resulting from recreational activities involving a significant risk of ingestion of water, including wading by children, swimming, water skiing, etc., in order to maintain the designated contact recreation use. The draft permit prohibits the discharge of domestic sewage. Domestic wastewater at the facility is routed to a septic tank/drainfield system. Therefore, there is no domestic sewage component to the wastewater discharge authorized by the draft permit.

COMMENT 15:

Wendi Hammond comments that the application and draft permit are improper because "[a]ll determinations are preliminary and subject to additional review and or revisions." As such, the application is incomplete and the public has not been afforded the opportunities for and protections of public participation as provided by state and federal law. The Applicant's and TCEQ's actions have caused the public to review and comment on an incomplete application and draft permit in violation of federal and state laws and regulations, illustrated by the issues identified in the other comments discussing missing application information and technical analysis.

RESPONSE 15:

This application was declared administratively complete on November 13, 2008. Application processing is governed by 30 TAC Chapter 281. Applications are initially reviewed for administrative completeness. *See* 30 TAC § 281.3. The contents of an application for wastewater discharge permit are set out in 30 TAC §§ 281.5, 305.45 and 305.48. Should TCEQ staff find any deficiencies in the application, it may issue a notice of deficiency, which if not corrected within the

appropriate time, would result in a return of the application. *See* 30 TAC § 281.18. Upon finding that the application is administratively complete, the ED issues a declaration of administrative completeness. *See* 30 TAC § 281.17(a). This declaration is available in the NORI that was mailed to the landowners in this case and published in the newspaper of largest circulation in the county where the facility is proposed to be located. The NORI is also available at the TCEQ Office of the Chief Clerk's database.[6]

Subsequent to this declaration of administrative completeness, the application undergoes a technical review subject to 30 TAC § 281.19. This review also includes an opportunity for the Applicant to cure any deficiencies discovered by the ED. Based on this technical review, the ED formulates its preliminary decision on the application. The preliminary decision in this case was mailed to the landowners and published in the newspaper of largest circulation in the county where the facility is proposed to be located. This notice is available at the TCEQ Office of the Chief Clerk's Database.[7] The publication of the NAPD begins the comment period. *See* Tex. Water Code, § 5.553. Accordingly, the Texas statutes contemplate preliminary decisions and public comment. Public comments are valuable to the ED in making a decision on a permit. The ED reviews and responds to all relevant, material and significant public comments. The determination in this case may be influenced by a relevant comment that would cause the ED to make changes to the draft permit. The ED reviewed the significant comments in this case and made changes to the draft permit based on the comments. Other Requirement Nos. 9 and 11 in the draft permit were revised in response to public comments.

COMMENT 16:

Wendi Hammond comments that the technology-based effluent limits within the application are incomplete, inadequate, and/or incorrect. The effluent limitations are not properly based on 40 CFR Part 423. Also, the effluent limits for Outfall 002 including, but not limited to, TOC, oil and grease, pH are not appropriate or were not properly established. Additionally, the draft permit fails to provide in clear and enforceable terms limits specifically keyed to characteristics for treatment and disposal.

RESPONSE 16:

Technology-based effluent limitations in the draft permit for Outfall 001 were developed in accordance with 40 CFR Part 423 for a new source which proposes to discharge cooling tower blowdown and low volume waste sources.[8] The limits for total organic carbon, oil and grease, and pH for Outfall 002 were established based on Best Professional Judgment (BPJ) and are considered to be appropriate for discharges of storm water from steam electric generating facilities. These

[6] Available at http://www10.tceq.state.tx.us/epic/enotice/index.cfm?fuseaction=main.PublicNoticeDescResults&CHK_ITEM_ID=657315172008326

[7] Available at http://www10.tceq.state.tx.us/epic/enotice/index.cfm?fuseaction=main.PublicNoticeDescResults&CHK_ITEM_ID=477343262009148

[8] 40 CFR Part 423 (Steam Electric Power Generating)

effluent limits are consistent with effluent limits found in other TPDES permits authorizing the discharge of storm water from electric generating facilities. The limitations and monitoring requirements established in the draft permit can be found in **Response 1**.

Additionally, EPA approved the draft permit in July, 2009. Therefore, the TCEQ believes the draft permit contains the applicable federal technology-based effluent limits for discharges from steam-electric generating facilities.

COMMENT 17:

Wendi Hammond comments that Requirement Nos. 11 and 13 of the draft permit are inadequate and improper. The draft permit improperly allows the development of a storm water pollution prevention plan. Both of these issues circumvent meaningful public participation concerning the monitoring, record keeping, and reporting requirements.

RESPONSE 17:

The effluent testing requirements found in the Other Requirements section of the draft permit for Outfall 001 and 002 are intended to obtain actual data that is not currently available. The facility is unable to provide the required data at this time because the facility is not yet built or in operation.

Thus, the data must be obtained after the facility is in operation and, therefore, after the permit is issued. Based on a review of the actual data obtained after the facility is operating, the TCEQ may determine it is necessary to initiate a permit amendment to add additional limits, as necessary, to protect the receiving stream. However, the permit will not be made any less stringent or protective than the draft permit that was available for public review and comment.

The draft permit's requirement for the Applicant to produce a storm water pollution prevention plan (SWP3) is a common requirement found in TPDES permits with storm water-only outfalls. The Applicant is required to evaluate the procedures at the facility and take steps to ensure that the potential for storm water contamination is kept to a minimum. Qualified personnel, who are familiar with the industrial activities performed at the facility, must conduct monthly inspections to determine the effectiveness of the Good Housekeeping Measures, Spill Prevention and Response Measures, Best Management Practices, and the Employee Training Program. The development of the plan will help to ensure less potential for possible pollutants potentially found in storm water being discharged from the facility. Likewise, any changes to the SWP3 will not make the permit any less stringent or protective than the draft permit that was available for public review and comment.

COMMENT 18:

Wendi Hammond comments the application fails to adequately identify and analyze the "wilderness" description of the receiving waters, especially the receiving waters further downstream from the outfalls.

RESPONSE 18:

Worksheet 4.0- Receiving Waters in the permit application requires the Applicant to describe the receiving waters within three miles of the discharge point. The application lists four descriptions: Wilderness, Natural Area, Common Setting, and Offensive to describe the aesthetics of the stream. The Applicant listed Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); and water clarity discolored. The Applicant is also required to send photographs of area upstream and downstream of the discharge point.

As part of the permit application process, receiving water information provided within the application is used to supplement the ED's preliminary determination of the uses of the receiving waters in accordance with the TSWQS and the IPs. The supplemental information provided by the Applicant in the application was sufficient for the ED's staff to review the potential impacts on the receiving water relevant to this permit.

COMMENT 19:

Wendi Hammond questions the consistency and compatibility of the application and proposed permit with the applicable water quality management plan.

RESPONSE 19:

The Agency does not routinely include industrial wastewater permits in the Water Quality Management Plan (WQMP) update unless it directly pertains to a Total Maximum Daily Load (TMDL) or a Waste Load Evaluation (WLE) for the designated segment. The draft permit was reviewed based on the current water quality standards, which are consistent with the State's WQMP.

COMMENT 20:

Wendi Hammond comments that the application does not contain adequate facility designs and specifications.

RESPONSE 20:

TCEQ staff reviewed the application and concluded that the required information was submitted. TCEQ does not dictate a specific treatment process for the treatment of the wastewater in TPDES permits. The permit application on the Technical Report 1.0 on Page 3 requires a list of any physical, chemical, and/or biological treatment process that is used for the treatment of wastewater to be authorized for disposal at the facility. The permit application also requires a flow diagram of each treatment unit and all sources of wastewaters that flow into the treatment plant and to each outfall.

COMMENT 21:

Wendi Hammond comments that the proposed permit fails to provide in clear and enforceable terms the character of the discharge and the character of the flow limitations.

RESPONSE 21:

Page 2 of the draft permit lists the authorized wastestreams to be cooling tower blowdown and low volume waste sources for Outfall 001. Blowdown is defined in the draft permit at Other Requirement No. 8 as meaning the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practices. Low volume waste sources is defined in the draft permit at Other Requirement No. 5 as wastewaters from, but not limited to wet scrubber air pollution control systems, ion exchange water treatment system (cation/anion mixed bed waste), water treatment evaporator blowdown, boiler blowdown, laboratory and sampling streams (water from eye wash station and showers), media filter backwash, floor drainage, cooling tower basin cleaning wastes, and blowdown from recirculating house service water systems. Domestic and air conditioning wastes are not included. The flow limit for this outfall is provided on Page 2 of the draft permit as well. The permitted flow limits for Outfall 001 are a daily average flow not to exceed 1,430,000 gallons per day, and a daily maximum flow not to exceed 1,940,000 gallons per day.

Page 2a of the draft permit lists the character of the discharge authorized from Outfall 002 as being storm water. Since storm water discharges are based on precipitation events, it is difficult to assign a specific flow limit. Therefore, the flow limit provided for Outfall 002 is intermittent and flow variable. The facility will be required to record the flow from this outfall during rain events and provide that data to the TCEQ.

Additionally, see **Response 22** below, as it relates to enforceable terms in the draft permit.

COMMENT 22:

Wendi Hammond comments that the draft permit fails to comply with federal and state enforceability requirements because the application and draft permit fail to require necessary information, reporting, and/or record keeping, including, but not limited to, sufficient frequency and type of monitoring to detect violations.

RESPONSE 22:

The draft permit was developed according to the applicable state and federal rules and requirements. The draft permit contains effluent limitations, standard provisions, and permit-specific provisions typically found in other wastewater discharge permits for steam electric generating facilities. If the permit is issued, all of the limitations and provision become enforceable requirements of the permit. Therefore, the TCEQ believes this draft permit is enforceable.

Because many wastewater discharge permits are developed in accordance with federal regulations, EPA oversees TCEQs enforcement of wastewater issues. In addition to monthly self-reporting requirements and wastewater treatment plant inspections, TCEQ relies on citizen complaints to help ensure compliance with its rules and permits. Citizens may contact the TCEQ at 1-888-777-3186,

the regional office in the Dallas/Fort Worth area at 817-588-5800, or by e-mail at complaint@TCEQ.state.tx.us to report suspected violations or to file a complaint.

COMMENT 23:

Wendi Hammond comments that the draft permit does not require sufficient frequency and type of monitoring (e.g., whole effluent toxicity monitoring) to detect violations or evaluate water criteria, degradation and/or toxicity as the conditions of discharge and conditions in the receiving waters change from time to time.

RESPONSE 23:

The draft permit requires Whole Effluent Toxicity (WET) testing. Specifically, the draft permit requires a 48-hour Acute WET test at a frequency of once per quarter and a 24-hour acute WET test at a frequency of twice per year. WET testing is designed to protect the receiving water quality from the combined toxic effect of pollutants which may be present in the effluent. Acute WET testing measures the survival of an invertebrate and vertebrate test species within a mixture of wastewater and the receiving water at various concentrations. The concentrations are dictated by the TCEQ Implementation Procedures and are based on the discharge mixing zone. In this case, the most stringent dilution series to protect aquatic life is included in the draft permit. If a WET test shows that the effluent has the potential to cause lethal effects in the receiving stream, the Applicant is required to identify the toxicant or toxicants and reduce or eliminate the toxicity of the effluent. The testing methods and frequencies required within the draft permit are consistent with TSWQS and the WET testing policies and procedures identified in the IPs. A detailed description of WET testing is contained in the IPs which is available in the TCEQ's website at http://www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/rg/rg-194.html.

COMMENT 24:

Wendi Hammond comments that the application fails to appropriately consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water having an established recreational standard.

RESPONSE 24:

The TSWQS state that "[c]oncentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state." 30 TAC § 307.4(b)

The purpose of the TSWQS is to maintain the quality of water in the state and to be protective of human health. The TCEQ uses *E. coli* as an indicator of recreational suitability in effluent limits for TPDES wastewater discharges. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination by feces of warm blooded animals. The level of *E. coli* that is considered

a concern for potential contamination by feces of warm blooded animals is 126 colonies per 100 ml or greater. This permit does not contain any effluent limits for bacteria because this is an indutrial discharge permit and does not contain a domestic wastewater component. The domestic wastewater producted at the facility will be routed to an onsite septic tank for treatment and disposal.

COMMENT 25:

Wendi Hammond comments that the draft permit requires testing of Outfall 001 and 002 discharges within 90 days after the permit is issued; however, the plant may not be operational at that time. The initial discharge may or may not actually be the first time industrial wastewater is discharged in any amount from outfall 001 or when the plant is operational for outfall 002. For example, some wastewater discharge may occur during construction and/or pre-start up testing. The testing may not accurately reflect the analysis that would happen when the plant is operational.

RESPONSE 25:

The TCEQ acknowledges that the facility may not be in operation within 90 days after the permit is issued. In response to this comment, Other Requirement No. 9 for Outfall 001 was revised to require effluent samples to be taken from the first four discharges of wastewater within 90 days of commencement of commercial operations. Other Requirement No. 11 for Outfall 002 was also to require effluent samples be taken within 90 days of commencement of commercial operations, or from the first four storm water events after commencement of commercial operations. By revising these requirements, the effluent samples submitted to the TCEQ for review will be more representative of the actual water quality to be expected from the facility during normal operations.

COMMENT 26:

Wendi Hammond comments that the Applicant's compliance history at this or other facilities require denial of the application, or at the very least, closer scrutiny of the information in the application and additional conditions and terms in the proposed permit to minimize the likelihood of future violations.

RESPONSE 26:

During the technical review, the ED reviews the compliance history of the company and the site, based on the criteria in 30 TAC, Chapter 60. The compliance history is reviewed for the company and site for the five-year period prior to the date the permit application was received by the ED. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance. A company and site may have one of the following classifications and ratings:

High: rating < 0.10 (above-average compliance record)
Average by Default: rating = 3.01 (sites never investigated)
Average: 0.10 < rating < 45 (generally complies with environmental regulations)
Poor: 45 < rating (performs below average)

As of February 2, 2010, this site has a rating of 3.01 and a classification of AVERAGE BY DEFAULT. The company rating and classification, which is the average of the ratings for all sites the company owns, is 3.01 and a classification of AVERAGE. Based on this rating and classification, the ED determined that the company is operating in compliance with rules and regulations, and that there is no basis to deny the permit based on compliance issues.

COMMENT 27:

Wendi Hammond comments that the application and draft permit fail to comply with the requisite federal and state laws and regulations concerning Best Technology Available (BTA).

RESPONSE 27:

The proposed draft permit was drafted in accordance with 40 CFR § 423.15, New Source Performance Standards (NSPS). The NSPS are as stringent as the BTA regulations for power plants found at 40 CFR § 423.13. Therefore, the TCEQ believes the draft permit complies with the requisite federal and state laws and regulations concerning BTA.

The TCEQ also received approval of the draft permit from EPA in July, 2009. Therefore, the TCEQ believes the draft permit meets all applicable state and federal rules regarding wastewater discharge permitting for steam electric generating facilities.

COMMENT 28:

Wendi Hammond comments the application and draft permit fail to minimize adverse environmental impacts and that the draft permit improperly undermines public participation by postponing analysis and determinations concerning Best Technology Available (BTA) analysis for minimizing Adverse Environmental Impacts (AEI) until after the permit is issued by the agency.

RESPONSE 28:

The TCEQ assumes this comment is in regards to the applicability of the Clean Water Act, § 316(b), having to do with Cooling Water Intake Structures and the determination that the structure used at the proposed facility meets BTA analysis for minimizing AEI. The proposed facility will receive its raw water from the City of Corsicana from an intake structure controlled and operated by the city. Since the facility will be obtaining its raw water through a contract from a public water system, the requirements of § 316(b) do not apply to this facility and the determinations concerning BTA for minimizing AEI are not required to be made for this facility.

COMMENT 29:

Wendi Hammond comments that the TCEQ improperly developed the proposed draft permit on documents that are not compatible with or approved by federal law and or state law requirements.

RESPONSE 29:

The draft permit was drafted in accordance with all appropriate state and federal law requirements. This includes, but is not limited to 40 CFR Parts 423 and 122; 30 TAC Chapters 305, 307, and 319; Federal Clean Water Act Chapter 402; and Texas Water Code § 26.027.

COMMENT 30:

Wendi Hammond comments that the proposed permit fails to provide in clear and enforceable terms rates of application to the waters including, but not limited to, the quantity, flow, location of disposal and condition of disposal.

RESPONSE 30:

Page 2 of the draft permit, addressing Outfall 001, authorizes the discharge of cooling tower blowdown and low volume waste sources at a daily average flow not to exceed 1,430,000 gallons per day and a daily maximum flow not to exceed 1,920,000 gallons per day. It further requires the effluent monitoring samples be taken on the southeast corner of the plant site, at the Outfall 001 effluent pipe sampling portal, after all wastewaters have commingled, and prior to entering the unnamed tributary of Little Pin Oak Creek. Page 2a of the draft permit, addressing Outfall 002, authorizes the discharge of storm water on an intermittent and flow variable basis. Due to the intermittent nature of storm water, no flow limit could be assigned at this outfall. The effluent samples for compliance purposes for this outfall are to be taken after wastewater is discharged from the storm water retention pond and prior to entering the unnamed tributary of Little Pin Oak Creek.

The Definitions and Standard Permit Conditions section of the draft permit also contains conditions which dictate when a facility may or may not discharge wastewater.

COMMENT 31:

Wendi Hammond comments that the application and draft permit inadequately address the inclusion of additional wastestreams including, but not limited to, low volume waste sources, metal cleaning wastewater, etc. This includes, but is not limited to, providing effluent limitations for pollutants resulting from metal cleaning.

RESPONSE 31:

The permit application requested the authorization to discharge cooling tower blowdown and low volume waste sources via Outfall 001 and storm water via Outfall 002. Technology-based effluent

limits for low volume waste sources based on 40 CFR § 423.15 have been imposed in the draft permit for total suspended solids and oil and grease at Outfall 001.

The permit application did not request authorization to discharge metal cleaning waste. Therefore, appropriate technology-based limits for this particular wastestream were not included in the proposed draft permit. If the facility begins to produce water resulting from metal cleaning, or any other wastestream not already specified in the permit, the facility would need to submit a major amendment request to the TCEQ requesting the authorization to discharge these new waste streams. At that point the appropriate effluent limits would be placed in the permit.

COMMENT 32:

Wendi Hammond questions the adequacy of the impoundments, outfall canals, and outfall routes to protect the surface and ground waters from contamination. This includes, but is not limited to, the construction, liners, berms, etc.

RESPONSE 32:

The only impoundment proposed at the facility is the storm water retention pond. The only water this pond will receive and store is storm water run-off from non-industrial areas of the facility. The draft permit contains a requirement for the Applicant to produce storm water best management practices (BMPs) for the facility which are intended to reduce the amount of contaminated runoff from the facility and potential pollutants from entering the storm water retention pond. The storm water from this type of facility also would qualify for coverage under the TPDES Multi-Sector Industrial General Permit for Storm Water, TXR50000, which does not require storm water retention ponds to be lined. Therefore, proposed draft permit does not require this pond to be lined since it is only permitted to contain non-contact storm water.

The wastewater discharged from this facility, if constructed, will be screened as described in **Response 1**. This screening should ensure the wastewater entering the outfall routes and canals should protect aquatic life in the surface water and ground water from contamination.

COMMENT 33:

Wendi Hammond comments that the draft permit fails to adequately require monitoring, record-keeping, and reporting to comply with "free available chlorine" and "total residual chlorine" limitations. The application and draft permit improperly identify and limit outfall parameters including, but not limited to, Biochemical Oxygen Demand (BOD) monitoring, chlorine residual monitoring, maximum chlorine residual limits.

RESPONSE 33:

Based on the discharge of cooling tower blowdown via Outfall 001, the draft permit requires record-

keeping, monitoring and recording of free available chlorine in accordance with federal regulations.[9] Total residual chlorine is not required to be monitored or reported by the draft permit. Based on 40 CFR § 423.15, total residual chlorine limits are required for facilities which discharge once-through cooling water. Since the facility does not propose to use once through cooling water, effluent limits for total residual chlorine were not included in the draft permit. The draft permit does not contain an effluent limit for BOD. Therefore, this limit could not have been improperly identified in the draft permit.

COMMENT 34:

Diane Rawlins comments that the plant is not going to provide power to Navarro County, and therefore should be built where they need the power. **Vicky Prater** comments that no company, city, or county government has the right to force an unwanted industry on a population that does not want it.

RESPONSE 34:

In the evaluation of the permit application, the feasibility or need for electricity cannot be considered by TCEQ in developing the proposed wastewater discharge permit. The permit application review for a TPDES permit is limited to the wastewater treatment and/or disposal operations proposed at the facility. TCEQ does not have the authority to determine the amount of energy that is required by the State of Texas or to limit the number of energy providers.

COMMENT 35:

Wendi Hammond comments that the new source determination was not properly performed.

RESPONSE 35:

The new source determination was performed in accordance with 40 CFR § 122.4(i). First, that section provides that a permit may not be issued to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. Because the proposed discharge from this facility will be screened, as described in **Response 1**, above, the facility is not expected to cause or contribute to the violation of water quality standards if operated and maintained as permitted. Second, the ED reviewed whether the proposed discharge route is to a segment listed on the states' inventory of impaired and threatened water, the 2008 Clean Water Act 303(d) list, and found that it was not. Third, the ED determined that the proposed discharge route is not to a segment with a finalized total maximum daily load (TMDL).

Finally, the ED performed a new source review in accordance with 40 CFR § 122.2 to determine the appropriate federal effluent guidelines to apply to the discharge from the proposed facility. Based on this review, technology-based effluent limits from 40 CFR § 423.15, New Source Performance Standards were imposed on the discharge from the proposed facility. These guidelines represent the

[9] 40 CFR § 423.15

most stringent federal technology-based effluent limits for this type of facility.

COMMENT 36:

Bryan Downs, James L. Thompson, Daniel Roberts, Barbara Roberts, Tina Roberts Denbow, Tonya Roberts, Rick Anderson, and **Vicky Prater** have concerns regarding Pin Oak Creek overflowing and affecting their ability to travel and access parts of their property as a result of the discharge from the facility. **Diane Rawlins** is concerned that if the discharge of 1.5 million gallons of water will flood the entire discharge route. Ms. Rawlins would like the facility to find an alternative discharge route to the reservoir. **Wendi Hammond** is concerned that the discharge from the facility might contribute to flooding and significant erosion since downstream areas are already subject to flooding and significant erosion under existing circumstances. **Terry Loftis** thinks it is irresponsible the TCEQ does not take erosion and flooding into account during the permitting process.

RESPONSE 36:

TCEQ does not address flooding issues in the wastewater permitting process, unless there is a potential impact to water quality. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The draft permit includes effluent limits and other requirements that the Applicant must meet, even during rainfall events and periods of flooding. Page 1 of the draft permit includes the following language:

> The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

COMMENT 37:

Jason K. Dodd comments that he feels the discharge of polluted wastewater in this area far outweigh any financial gains associated with this operation.

RESPONSE 37:

The TCEQ does not have jurisdiction to prohibit owners and operators from seeking authorization for the discharge of wastewater, nor from receiving such authorization if they comply with all statutory and regulatory requirements. Based on the TCEQ's review of this application, including analysis of health impacts and use of best available control technology, this facility should comply with all applicable health effects guidelines and discharge control requirements.

COMMENT 38:

Wendi Hammond comments that the application fails to provide adequate information concerning the impact of access roads, utility lines and construction easements involved in the project.

RESPONSE 38:

The TCEQ's jurisdiction for a permit application of this type is limited to the issues set out by statute. The TCEQ may not consider the impact of roads, utility lines, or construction easements in determining whether to approve or deny an industrial wastewater discharge application. However, the scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of property.

COMMENT 39:

Mayor Cliff Brown, Lee Mcleary, Lindsay King, and Liz Smith expressed their support for the proposed TPDES permit and the proposed project.

RESPONSE 39:

The TCEQ acknowledges these comments.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

In response to Comment 25 the following changes have been made to the draft permit.

Other Requirement No. 9 has been revised as follows, changes are underlined:

Wastewater discharged via Outfall 001 shall be sampled and analyzed for those parameters listed on Attachment 1, Table 1 and Table 2 of this permit for a minimum of four (4) separate sampling events which are a minimum of one (1) week apart. Attachment 1 shall be completed with the analytical results for Outfall 001 and sent to the TCEQ, Wastewater Permitting Section (MC-148), Industrial Team. Analytical testing for Outfall 001 shall be conducted within 90 days of commencement of commercial operations. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.

Other Requirement No. 11 has been revised as follows, changes are underlined:

Storm water discharged via Outfall 002 shall be sampled and analyzed for those parameters listed on Attachment 1, Table SW-1 of this permit at least once by grab sample within the first 30 minutes of discharge or once by a flow weighted composite sample if equipment is available. Attachment 1,

Table SW-1 shall be completed with the analytical results for Outfall 002 and sent to the TCEQ, Wastewater Permitting Section (MC-148), Industrial Team. Analytical testing for Outfall 002 shall be conducted within 90 days of commencement of commercial operations, or from the first four storm water events after commencement of commercial operations. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery
Executive Director

Robert Martinez, Director
Environmental Law Division

Christiaan Siano, Staff Attorney
Environmental Law Division
State Bar No. 24051335
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-6743
Fax (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 10, 2010

TO: Persons on the attached mailing list.

RE: Navarro Generating LLC
TPDES Permit No. WQ0004870000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Corsicana Public Library, 100 North 12th Street, Corsicana, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at http://www.tceq.state.tx.us/about/comments.html or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosures

MAILING LIST
for
Navarro Generating LLC
TPDES Permit No. WQ0004870000

FOR THE APPLICANT:

Chris Shugart
Navarro Generating LLC
1600 Smith Street, Suite 4025
Houston, Texas 77002

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Christiaan Siano, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Tres Koenings, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

ALLARD , LEON D
2016 GLENWOOD CIR
CORSICANA TX 75110-3420

ANDERSON , RICK B
716 BROOKHAVEN DR
IRVING TX 75061-7915

ANDERSON , RICKY B
716 BROOKHAVEN DR
IRVING TX 75061-7915

BLANK , ERNEST
6735 FM 709 S
CORSICANA TX 75110-9353

BLANK , PAT E
6735 FM 709 S
CORSICANA TX 75110-9353

BROWN , CLIFFORD L
319 W 7TH AVE
CORSICANA TX 75110-6447

CLAMONS , C CLOVER PROJECT MANAGER
SWCA
BLDG 1 STE 110
4407 MONTEREY OAKS BLVD
AUSTIN TX 78749-4411

DENBOW , TINA ROBERTS
1028 HIDDEN HILLS DR
CORSICANA TX 75110-9562

DODD , JASON K
270 LINCOLN DR
STREETMAN TX 75859-3295

DOWNS , BRYAN
6346 SW COUNTY ROAD 2150
RICHLAND TX 76681-4306

GAFFORD , KIMBERLY
7426 SW COUNTY ROAD 2030
PURDON TX 76679-3088

GARNETT , NANCY
TXI
STE 700W
1341 W MOCKINGBIRD LN
DALLAS TX 75247-6913

GARVEY , JAN & RICHARD
214 SE COUNTY ROAD 3124A
CORSICANA TX 75109-0821

HAMMOND , WENDI
LAW OFFICE OF WENDI HAMMOND
7325 AUGUSTA CIR
PLANO TX 75025-3517

HYDEN , HELEN J
181 SW COUNTY ROAD 0020
CORSICANA TX 75110-9312

JONES , CONSTANCE L
13412 HWY 14
RICHLAND TX 76681-4319

JONES , ELLA
12244 HWY 14
RICHLAND TX 76681-4377

JONES , ELLA MAE
13412 HWY 14
RICHLAND TX 76681-4319

JONES , PATRICIA J
6346 SW COUNTY ROAD 2150
RICHLAND TX 76681-4306

KING , JACKLYN T
8040 FM 642
PURDON TX 76679-3105

KING , LINDSAY
1625 GLENBROOK ST
CORSICANA TX 75110-1578

KREJCI , PHIL
301 BENTWOOD CIR
CORSICANA TX 75109-0581

LOFTIS , SUSAN M
2714 OAK VALLEY LN
CORSICANA TX 75110-0217

LOFTIS , TERRY LYNN
2714 OAK VALLEY LN
CORSICANA TX 75110-0217

MCCLEARY , LEE
1501 N 22ND ST
CORSICANA TX 75110-2805

MCHARGUE , DAVID
PO BOX 797
WORTHAM TX 76693-0797

MORGAN , CHARLES E
609 E FM 489
BUFFALO TX 75831-6814

MUIR , JENNIFER & ROBERT
8608 FM 709 S
CORSICANA TX 75110-9348

NELSON , JOHN D
1001 DOBBINS RD
CORSICANA TX 75110-2217

PATTERSON , MARGARITA & PATRICK R
6944 SW COUNTY ROAD 0030
CORSICANA TX 75110-9321

PENDERGRASS , LYNN & SHARON
177 KINGSWOOD DR
STREETMAN TX 75859-3062

PICKETT , HELEN
129 FCR 925
MEXIA TX 76667-2977

PRATER , HAL W
3310 NE COUNTY ROAD 0091
CORSICANA TX 75109-8444

PRATER , VICKY
PO BOX 1896
CORSICANA TX 75151-1896

RAWLINS , DIANA
PEOPLE UNTIED FOR THE ENVIRON
1541 W 4TH AVE
CORSICANA TX 75110-4261

ROBERTS , BARBARA & DANIEL
PO BOX 174
RICHLAND TX 76681-0174

ROBERTS , TONYA
120 MARTIN RD
CORSICANA TX 75110-8780

SMITH , GEORGE A
8021 TOURMOLINE
STREETMAN TX 75859-7162

SMITH , LIZ
6082 SW COUNTY ROAD 0050
CORSICANA TX 75110-5479

SPAE , BILL
PO BOX 208
POWELL TX 75153-0208

STEED , FRANK
3514 FRANCISCO BAY DR
KERENS TX 75144-6197

STEELE , CARLA
6819 FM 709 S
CORSICANA TX 75110-9306

THOMPSON , JAMES L
6346 SW COUNTY ROAD 2150
RICHLAND TX 76681-4306

WARD , SHARON
159 PR 917
FAIRFIELD TX 75840

WARREN , JAMES
6334 SW COUNTY ROAD 2150
RICHLAND TX 76681-4306

WEEMPE , MIKE
1100 W MAIN ST
RICHLAND TX 76681-4339

WERKENTHIN JR , FRED B
BOOTH AHRENS & WERKENTHIN PC
STE 1515
515 CONGRESS AVE
AUSTIN TX 78701-3504

WILLIS , RONNY
4015 COUNTRY CLUB RD
CORSICANA TX 75110-1154